

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL D. HEARNES,

Plaintiff,

No. CIV S-04-0198 GEB GGH P

vs.

CA. DEPT. OF CORRECTIONS, et al.,

Defendants.

ORDER

On November 29, 2004, the court issued an order addressing defendants' motion to dismiss. The court dismissed plaintiff's complaint with leave to file an amended complaint with respect to the following claims: 1) defendant Schwabb stared at plaintiff in a menacing manner; 2) the claims against defendant Runnels; 3) defendant Lamberton denied plaintiff his right of access to the courts; 4) defendant Schwabb threatened to kill plaintiff; 5) plaintiff was denied due process by his failure to receive a color television after his own television blew out.

On July 12, 2005, the court granted plaintiff thirty days to file an amended complaint in accordance with the November 29, 2004, order. After having been granted an extension of time, plaintiff filed an amended complaint on October 20, 2005. On October 26, 2005, defendants Runnels, Schwabb, Lamberton, Ingerwerson, Leroy, Jackson and Doyle filed an answer.

1 The amended complaint names three new defendants: California Department of
2 Corrections, Officer Colman and Officer Hardie. Plaintiff did not file a motion for leave to file
3 an amended complaint naming these parties. In addition, the court did not authorize plaintiff to
4 raise new claims against new defendants. Rather, the November 29, 2004, order was very
5 specific regarding the claims plaintiff was permitted to amend. For these reasons, the court
6 orders that the claims against California Department of Corrections, Officer Colman and Officer
7 Hardie are disregarded. Fed. R. Civ. P. 15(a)(following the filing of a responsive pleading, a
8 party may amend their pleading only by leave or court or by written consent of the adverse party).

9 Accordingly, IT IS HEREBY ORDERED that the claims against California
10 Department of Corrections, Officer Colman and Officer Hardie contained in the amended
11 complaint filed October 20, 2005, are disregarded.

12 DATED: 2/1/06

13 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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